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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056168	
Party	Plaintiff Legend Pictures LLC	
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Attachments	Petitioner's Reply in Further Support of Sanctions.pdf(108972 bytes)	

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

LEGEND PICTURES, LLC)	
Petitioner)	
V.)	Cancellation No. 92056168
QUENTIN DAVIS)	
Respondent)	

PETITIONER'S REPLY IN FURTHER SUPPORT OF ITS MOTION FOR DISCOVERY SANCTIONS AND FOR SUSPENSION

Petitioner files this brief response to Davis' opposition to Petitioner's Motion for Discovery Sanctions and for Suspension.

In his reply, Davis alleges that Petitioner is actually the one guilty of obstructing the process of discovery, i.e., Davis' discovery, and that Petitioner is thus guilty of unclean hands and consequently not eligible to move for sanctions.

Rather than addressing the issues presented by Petitioner's motion, or complying with the Board's two orders, or explaining any mitigating factors for his failure to comply with the Board's orders, Davis continues his narrative on how his behavior is justified and/or excused by the Board's favoritism and/or Petitioner's unclean hands.

Davis' position once again points out why Petitioner's motion for sanctions is well taken.

The Board has twice ordered Davis to answer Petitioner's discovery. In its last Order, the Board ordered Davis to do each of the following by January 22, 2014:

• Answer, without objection, and produce all documents responsive to Legend Pictures' Requests for Production Nos. 2, 3, 4, 5, 6(a), 7, 12-29 and 31-39;

- Answer and produce all documents responsive to Legend Pictures' Requests for Production Nos. 1, 6(b), 8-11 and 30;
- Answer Legend Picture's Interrogatory Nos. 1-21; and
- Produce a privileged document log.

Despite the clear and express language of the Board's order to compel, Davis violated <u>each</u> and every one of these orders. Specifically:

- Showing disdain for the Board's order, Davis objected to all of Petitioner's Requests for Documents. Davis even chose to object to Petitioner's Requests for Production Nos. 2, 3, 4, 5, 6(a), 7, 12, 29, and 31-39, despite the fact that Board had ordered Davis to answer each of these production requests without objection.
- Showing disdain for the Board's order, Davis served his response late. Petitioner's failed to respond at all to Petitioner's document requests *until fully one month* after the deadline set by the Board. Even then the responses were virtually without content and rife with objections; and
- In direct violation of the Board's order, Davis failed and refused to produce a Privileged Document Log.

Even now, Davis still refuses to comply with the Board's orders. Davis has not withdrawn his objections and provided answers, Davis has not expressed remorse for his misconduct, nor has he produced the privileged document log. Nor has Davis explained why he refused to comply with the Board's orders. Instead, as in the past he continues his narrative that somehow Petitioner is delaying discovery.

In this regard, Davis accusations of "unclean hands" must fail. Davis never before requested a privilege log from Petitioner. Nor did Davis once complain about the lack of one. Nor did Davis ever state that its discovery had been or was being compromised by the lack of Petitioner's

Privilege Log. Nor can he assert that he was unaware of the existence of such documents, as this was one subject of Petitioner's motion to compel. In any event, Petitioner has now served a privileged document log on Davis, fully justifying Petitioner's good faith claims of privilege.

The same cannot be said of Davis or his claims of privilege. Davis still has not produced a privileged document log, despite being aware he was ordered to do so. Further, his inability to produce such a log makes clear that his claims of privilege were specious. Throughout this case, Davis has thrown himself on the Board's mercy, claiming pro se status. Yet, in response to discovery he has claimed the attorney client and work product privileges. One cannot have it both ways. One cannot claim pro se status and then attempt to evade discovery by parroting claims of attorney work product and attorney client privilege.

Petitioner respectfully submits that under the factors outlined in <u>Benedict v. Super Bakery</u>, 665 F.3rd 1263 (Fed. Cir. 2011) (noted in detail in Petitioner's Motion for Sanctions and also referred to below), default judgment should be entered.

In short, Davis willfully and repeatedly disregarded direct, express and clear Board orders and his discovery obligations. When a party like Davis violates the discovery rules and the Board's orders, the Board may impose a severe sanction, such as default, not only to penalize a party that has willfully violated court orders, but also to deter other litigants from future disruption of the judicial process.

As noted by the court in <u>Benedict v. Super Bakery</u>, 665 F.3rd 1263 (Fed. Cir. 2011), several factors may be useful in evaluating whether default judgment should be entered as a sanction for abuse.

These are: first, [whether] the errant party's behavior has severely hampered the other party's ability to present his case—in other words, that the other party has been so prejudiced by the misconduct that it would be unfair to require him to proceed further in the case. Second,

[whether] the prejudice caused to the judicial system [by] the party's misconduct has put an intolerable burden on [the Board] by requiring the [Board] to modify its own docket and operations in order to accommodate the delay. And finally, the [Board] may consider the need to sanction conduct that is disrespectful to the [Board] and to deter similar misconduct in the future.

Each factor is met here. Davis has rendered Legend's prosecution of this case impossible by refusing to disclose information and documents at the heart of Legend's claims. Davis has also placed an intolerable burden on the Board requiring the Board twice to modify its own dockets and operations to accommodate the delays caused by Davis' delays, refusals to comply, petitions to the Director and utter disdain for Board orders. The Board needs to sanction Davis to show that it will not tolerate and will deter similar misconduct.

The TTAB will not abuse its discretion or otherwise commit any error, in entering default judgment against Davis. Should the Board however wish not to terminate this case at this juncture, Legend asks the Board to enter appropriate sanctions including but not limited to the following:

- Order that Davis may not introduce or rely on any documents or other information produced after January 22, 2014 (the date such documents were to be produced);
- Order that Davis may not introduce or rely on any documents or other information on the claim of fraud or deem that claim admitted;
- Order that Davis may not file any other motions or papers in this proceeding or petitions without the prior consent of the TTAB;
- Order that Davis fully and completely answer ALL of Legend's First and Second Set of
 Interrogatories and First Requests for Production without objection, and produce all
 documents without objection, (including claims of privilege) within ten days of the
 Board's order;

Order that Davis fully and completely comply with the Board's order, failing which the

case shall be decided as in case of default against Davis.

Meantime, as Legend cannot proceed to trial, and if the case is not terminated as a result

of this motion, Legend asks the Board to continue to suspend the case pending Davis' compliance

with the Board's order and that if the case resumes that the Board extend discovery for sixty days

solely for Legend's benefit, including expert disclosures, the closing of discovery and all

remaining dates.

CONCLUSION

As granting Petitioner's motion for sanctions will not violate settled law, and will be in the

interests of justice, Petitioner respectfully requests that the Board grant Petitioner's motion for

sanctions.

Date: May 19, 2014

Respectfully submitted,

/Carla C Calcagno/ Carla Calcagno

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Attorneys for Petitioner

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 19, 2014 a true and accurate copy of the foregoing:

PETITIONER'S REPLY IN FURTHER SUPPORT OF ITS MOTION FOR DISCOVERY SANCTIONS AND FOR SUSPENSION

was served by agreement of the parties on Defendant by emailing a copy of the same to nevisbaby@hotmail.com and tharilest@yahoo.com.

/Janet G Ricciuti/

Janet G Ricciuti